

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

February 2, 2012

✓

Woody Van Dyke
General Manager
Williams Broadcasting Group
Post Office Box 6490
Lubbock, TX 79493

Re: Station KJAK FM
FY 2011 Late Penalty Waiver Request
Filed: 10-11-2011
Fee Control No.: RROG-11-00013976
Regulatory Fee Amount: \$3,630.00
Late Penalty Amount: \$907.50
Total Due as of 2-1-12: \$956.32

Dear Mr. Van Dyke:

This letter responds to the above-referenced *Request*¹ for waiver of the penalty for late payment of Fiscal Year (FY) 2011 regulatory fee. For the reasons stated herein, we deny your *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a timely manner."⁴ The unpaid regulatory fee, including the statutory late penalty, is a delinquent debt owed the United States that, under the law,⁵ accrues interest, penalties, and the cost of collection services until paid in full.

¹ Letter from Woody Van Dyke, Williams Broadcasting Group, P.O. Box 6490, Lubbock, TX 79493 to FCC, 455 12th Street, S.W., Washington, DC 20554 (dated Sept. 30, 2011; received Oct 11, 2011)(*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁴ 47 C.F.R. § 1.1164

The deadline for paying the FY 2011 regulatory fees was September 16, 2011;⁶ however, you did not make payment until September 30, 2011. As a result, as required by 47 U.S.C. § 159(c)(1), we assessed as a penalty for late payment an additional charge equal to twenty five percent (25%) of the fee that was not paid in a timely manner, which is \$907.50. That assessed penalty was not paid and it remains delinquent, and under our rules,⁷ we are required to dismiss your request for a waiver. However, in the alternative, we have considered the merits of your *Request* in the event you pay the penalty and accrued interest and penalties, and thereafter seek a waiver. Nonetheless, for the reasons discussed below, we deny your *Request*.

You assert in your *Request* that you “have always stayed current and punctual with [the licensee’s] regulatory fee remittance.” However, you “have not had occasion to visit the [FCC] website as [you] have counted on notification of regulatory fee amount due and due date, which has always been sent in the past.” You also assert “that [you were] unaware of the decision to cease notification of any kind regarding the subject.”⁸ These points do not present a legal ground or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁹ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

For example, on May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.¹⁰ The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer . . . , pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”¹¹ On July 31, 2009, the Commission released its order adopting these proposals.¹² In that order, the Commission advised regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹³ Thereafter, the Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹⁴ Finally, on September 2, 2009, the Commission released a third public notice reiterating that “**HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.**”¹⁵

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time (ET), *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁷ 47 C.F.R. §§ 1.1164(e); 1.1910.

⁸ *Id.*

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹¹ *Id.* at 5973 ¶ 20.

¹² *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹³ *Id.* at 10309 ¶ 26.

¹⁴ *Fee Filer Mandatory for FY 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

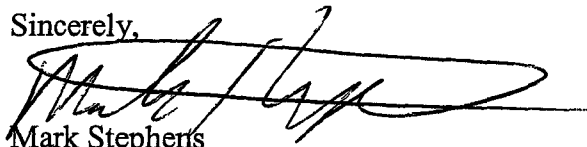
¹⁵ *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

Similarly, in 2010, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment."¹⁶ This notification was part of the Commission's increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁷

Every licensee is obliged to make the fee payment by the deadline. Moreover, a history of timely payment of the regulatory fee does not provide sufficient grounds to support a waiver of the late payment penalty in the situation where the deadline is missed.¹⁸ In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁹ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations. As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"²⁰ which are not present in your situation. Thus, we must deny your Request.

Payment of the unpaid balance of Williams Broadcasting Group's FY 2011 regulatory fee is now due. Because you did not pay the \$907.50 penalty when you made a partial payment for the FY 2011 regulatory fee, under 31 U.S.C. § 3717, we are required to assess interest and a penalty on that amount.²¹ We have calculated the total payment due as **\$956.32** as of February 1, 2012, and if you submit that amount together with a Form 159 (copy enclosed), within 30 days of the date of this letter, we will waive any further accrued interest or penalties. However, if we do not receive your payment within 30 days, additional interest and penalties will accrue from the date of this letter, and under the law,²² the Commission will initiate collection proceedings. If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁷ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁸ *See TWC Digital Phone, LLC* (OMD, Sept. 28, 2009); *Big River Telephone Company* (OMD, July 21, 2009).

¹⁹ *See XO Communications, LLC* (OMD, Nov. 10, 2010).

²⁰ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²¹ Under 31 U.S.C. § 3717, from September 17, 2011, \$3.40 in interest accrued at a rate of 1% per annum and \$20.42 in penalties accrued at a rate of 6% per annum. In addition, you incurred a \$25.00 administrative fee for collection of the delinquent amount.

²² *See* 47 C.F.R. § 1.1901, *et seq.*

Adama

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 22 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

RE: Waiver Request (Dark Station)
Licensee: Wilson Broadcasting Co., Inc.
Station: WAGF
Fee: FY 2011 Regulatory Fee
Date Request Filed: 9-13-11
Date Regulatory Fee Paid: 8-28-11
Fee Control No.: RROG-11-00013817
Regulatory Fee Amount: \$1,500.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request*,¹ for a waiver and refund of the above referenced fee. For the reasons stated herein, we deny Licensee's request.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees,

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to Managing Director, FCC, 445 12th St., SW, Washington, DC 20554 (received Sept. 13, 2011) (*Request*).

² 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁷ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. . . . Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁸ Licensee provided information that its application for silent status was submitted for “technical” reasons.⁹ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹ In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹² Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹³ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁴ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁵ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Request* at 1.

⁹ See FCC CDBS Public Access, Application Search Details BLSTA-20110105AAX.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹² 47 C.F.R. § 1.1166.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

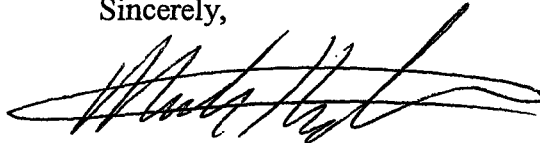
¹⁵ 10 FCC Rcd at 12762 ¶ 15.

the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁶

In asserting only that the "station currently is dark,"¹⁷ licensee failed to clarify its position before the Commission.¹⁸ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"¹⁹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁰ In this case, licensee's justification for its request to go dark was for "technical" reasons, *i.e.*, a "lightning strike."²¹ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²² we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized flourish extending from the end.

Mark Stephens
Chief Financial Officer

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1.

¹⁸ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

¹⁹ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²⁰ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²¹ Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-20110105AAX, Exhibit 1, Description (*i.e.*, "LIGHTNING STRIKE").

²² *Id.*

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 30 2012

Adama

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Waiver Request (Dark Station)
Licensee/Applicant: Wendolynn Tellez
Station: KSAG
Fee: FY 2011 Regulatory Fee
Date Request Filed: Sept. 13, 2011
Date Regulatory Fee Paid: Sept. 6, 2011
Fee Control No.: RROG-11-00013808
Regulatory Fee Amount: \$675.00

Dear Mr. Alpert:

This letter responds to Licensee's *Request*¹ for waiver and refund of \$675.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny the *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing

¹ Letter from Dan J. Alpert, 2120 N. 21st Rd., Arlington, VA 22201 to Managing Director, FCC, 445 12th St. S.W., Washington, DC 20554 (received Sep. 13, 2011) (*Request*).

² 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship. Under these circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."⁷ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission's above-referenced discussion concerning a dark station, and it asserts only that "[t]he station currently is dark."⁸ Licensee provided a copy of the Application Search Details,⁹ but no additional information to support its *Request*, e.g., verified financial documentation.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹⁰ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹¹ In this case, however, Licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹² Instead, Licensee asserts only that its station was silent. It did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was due, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹³ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁴ Inherent in the Commission's statement that "it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),"¹⁵ is the understanding that the applicant's petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission's relevant standards. Plainly, in order for it to be

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Request* at 1.

⁹ Application Search Details, BLSTA-20110208ADS.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹¹ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹² 47 C.F.R. § 1.1166.

¹³ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁴ The FCC Form to request silent status includes in the section, "Reason for going silent" five categories, i.e., Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

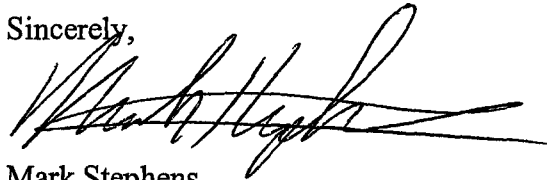
¹⁵ 10 FCC Rcd at 12762 ¶ 15.

unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁶

In asserting only that the "station is dark,"¹⁷ Licensee failed to clarify its position before the Commission.¹⁸ Rather than the unsupported conclusion offered, Licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"¹⁹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²⁰ In this case, Licensee's justification for its request to go dark was for "other," *i.e.*, "THE STATION IS OFF THE AIR PENDING THE FILING OF AN APPLICATION TO MOVE TO A NEW SITE."²¹ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information that is not part of the *Request*. Accordingly, without sufficient evidence of financial hardship, we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

Mark Stephens
Chief Financial Officer

¹⁶ 9 FCC Rcd at 5344 ¶ 29.

¹⁷ *Request* at 1.

¹⁸ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

¹⁹ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²⁰ 47 C.F.R. §1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²¹ Notification of Suspension of Operations/Request for Silent STA, BLSTA-20110208ADS, Exhibit 1, Description.

Adams

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Peter Tannenwald, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Re: WatchTV, Inc.
Stations: KABH-CA, KKEI-CA, KORK-CA,
KORS-CD, KORY-CA, KOXI-CA, & KOXO-CA
FY 2011 Regulatory Fee Waiver Request
Filed 9-9-11
Fee Control No. RROG-11-00013838
Regulatory Fee Amount: \$ 2,855.00

Dear Mr. Tannenwald:

This letter responds to WatchTV, Inc. (WatchTV's or licensee's) above-referenced *Requests*¹ for waivers and deferrals of Fiscal Year (FY) 2011 regulatory fees on the grounds that its Class A broadcast stations are silent. The *Requests* pertain to seven Class A broadcast television stations and nine broadcast auxiliary stations, *i.e.*, KABH-CA; KKEI-CA and WMU888 and WPNG508; KORK-CA; KORS-CD and WPNG509; KORY-CA; KOXI-CA and WMU887 and WPNG515; KOXO-CA and WPNI878. Our records reflect that WatchTV did not pay the \$2,855.00 regulatory fees. For the reasons stated herein, we must deny licensee's *Requests*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³

¹ Letter from Peter Tannenwald, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, VA 22209 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC (RE: Request for Regulatory Fee Waiver and Deferral of FY 2011 Regulatory Fees) (dated Sept. 9, 2011) (*First Request*); Letter from Peter Tannenwald, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, Arlington, VA 22209 to FCC, Office of Managing Director, 445 12th St. S.W., Rm 1-A625, Washington, DC (RE: Request for Regulatory Fee Waiver and Deferral of FY 2011 Regulatory Fees) (dated Sept. 12, 2011) (*Supplement to First Request*) (collectively, *Requests*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file "[p]etitions to go dark," as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions "are generally based on financial hardship."⁷ And "[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship."⁸ Licensee did not establish that those circumstances are present and applicable to each station.

Licensee asserts "[a] waiver is appropriate because all of the stations . . . are silent and will not return to the air before the regulatory fee payment deadline." In support, WatchTV notes that in 1995

the Commission determined that the imposition of a regulatory fee could be an impediment to the restoration of broadcast service; and therefore, it will grant petitions for waivers of regulatory fees on the grounds of financial hardship from licensees of broadcast stations which are dark (not operating)."⁹

Finally, WatchTV asserts that it "filed . . . Requests for Silent Special Temporary Authority for each of th[e] seven primary stations and three companion channels[, and] Media Bureau has recorded that the stations are silent."¹⁰ WatchTV did not identify the reasons why it requested silent status.

A waiver of the Commission's rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *First Request* at 2.

¹⁰ *Id.*

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹³ Instead, licensee asserts only that all stations were silent, but it did not present any evidence to establish whether or not each application to go silent was based on and supported by a fully documented financial position that shows it lacks funds sufficient to pay the regulatory fees and to maintain its service to the public.¹⁴ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁵ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁶ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee, and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁷

In asserting only that the “stations are silent,”¹⁸ licensee failed to clarify its position before the Commission.¹⁹ Rather than the unsupported conclusion, licensee should have provided evidence whether the applications to go dark were based on financial hardship that was “fully document[ed]”²⁰ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²¹ We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²² we deny each request for a waiver of the required regulatory fee.

Payment of WatchTV’s FY 2011 regulatory fees is now due. The \$2,855.00 regulatory fees should be submitted, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If licensee fails to pay the full amount due by that date, the debt is delinquent, and the

¹³ 47 C.F.R. § 1.1166.

¹⁴ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, i.e., Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

¹⁶ 10 FCC Rcd at 12762 ¶ 15.

¹⁷ 9 FCC Rcd at 5344 ¶ 29.

¹⁸ *First Request* at 1; see also *Supplement to First Request* at 1. A review of our records shows licensee’s reasons for going silent were not based on fully documented financial hardship, rather the reasons identified were “Program Source” (e.g., FCC File # BLSTA – 20101019ACR) and “Other” (e.g., FCC File # BLSAT – 20110318AEI).

¹⁹ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

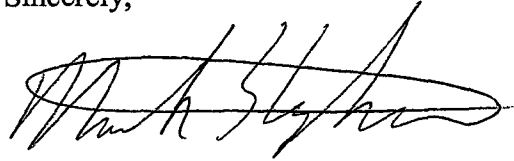
²⁰ 10 FCC Rcd at 12762 ¶ 13 (“It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”).

²¹ 47 C.F.R. § 1.1166 (“The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest.”). See also 10 FCC Rcd at 12761-62 ¶ 13.

²² *Id.*

statutory penalty of 25% of the unpaid fee,²³ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,²⁴ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens
Chief Financial Officer

²³ 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 (“the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.”).

²⁴ See 47 C.F.R. § 1.1901, *et seq.*

Adama ✓

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert, Esq.
2120 N. 21st Road
Arlington, VA 22201

Re: Tugart Properties, LLC
Station: WNGA
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013836
Regulatory Fee Amount: \$ 675.00

Dear Mr. Alpert:

This letter responds to Tugart Properties, LLC (Tugart's or licensee's) *Request*,¹ for waiver and refund of \$675.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011)(*Request*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship.”⁷ And “[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁹ Licensee attached a copy of the Commission’s Internet web page showing the search details of the application for silent status for “financial” reasons.¹⁰ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹³ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁴ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁵ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁶ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *Request* at 1.

¹⁰ See FCC CDBS Public Access Application Search Details BLSTA-20110810AAQ.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹³ 47 C.F.R. § 1.1166.

¹⁴ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

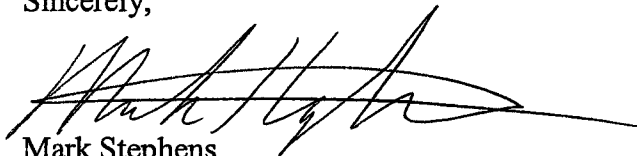
¹⁶ 10 FCC Rcd at 12762 ¶ 15.

unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁷

In asserting only that the "station currently is dark,"¹⁸ licensee failed to clarify its position before the Commission.¹⁹ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²⁰ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²¹ In this case, licensee stated the reason for its request to go dark was "financial," but without supporting evidence. Instead, licensee stated only that it "REQUESTS SPECIAL TEMPORARY AUTHORITY (STA) TO TEMPORARILY SUSPEND THE BROADCAST OPERATIONS ... OWNING TO THE LICENSEE'S FINANCIAL CONCERNS. ... AN STA OF 180 DAYS IS REQUESTED, BY WHICH TIME APPLICANT ANTICIPATED BEING ABLE TO RESUME WNGA'S OPERATIONS."²² That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 9 FCC Rcd at 5344 ¶ 29.

¹⁸ *Request* at 1.

¹⁹ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁰ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²¹ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²² Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-20110810AAQ, Exhibit 1, Description.

²³ *Id.*

Adams

/

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Tugart Properties, LLC
Station: WLET
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013856
Regulatory Fee Amount: \$ 600.00

Dear Mr. Alpert:

This letter responds to Tugart Properties, LLC (Tugart's or licensee's) *Request*,¹ for waiver and refund of \$600.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011) (*Request*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship.”⁷ And “[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁹ Licensee attached a copy of the Commission’s Internet web page showing the search details of the application for silent status for “technical” reasons.¹⁰ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. §1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹³ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁴ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁵ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁶ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *Request* at 1.

¹⁰ See FCC CDBS Public Access, Application Search Details BLSTA-20110421ABT.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹³ 47 C.F.R. § 1.1166.

¹⁴ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

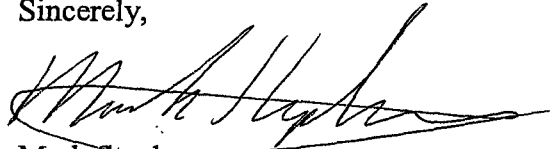
¹⁶ 10 FCC Rcd at 12762 ¶ 15.

case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁷

In asserting only that the "station currently is dark,"¹⁸ licensee failed to clarify its position before the Commission.¹⁹ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²⁰ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²¹ In this case, licensee requested to go dark for "technical reasons" that it could not operate at the site simultaneously with station WNEG.²² That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 9 FCC Rcd at 5344 ¶ 29.

¹⁸ *Request* at 1.

¹⁹ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁰ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²¹ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²² Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-2110421ABT, Exhibit 1, Description (*i.e.*, "WLET WENT OFF THE AIR BECAUSE IT CANNOT OPERATE AT THE SITE SIMULTANEOUSLY WITH WNEG.").

²³ *Id.*

Adamo

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Tugart Properties, LLC
Station: W299BK
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013857
Regulatory Fee Amount: \$ 395.00

Dear Mr. Alpert:

This letter responds to Tugart Properties, LLC (Tugart's or licensee's) *Request*,¹ for waiver and refund of \$395.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011)(*Request*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship.”⁷ And “[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁹ Licensee attached a copy of the Commission’s decision granting licensee’s application for Special Temporary Authority to permit the “FM Translator Station W300AY to remain silent ... pending a[pproval] of a new transmitter site.”¹⁰ And a copy of the Commission’s Internet web page showing the search details of the application for silent status for “other” reasons.¹¹ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹² In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹³ In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹⁴ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁵ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁶ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of*

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *Request* at 1.

¹⁰ Letter from H. Taft Snowden, Media Bureau, FCC to Douglas M. Sutton, Jr., Tugart Properties, LLC, P.O. Box Drawer E, Toccoa, GA (Aug. 19, 2011).

¹¹ See FCC CDBS Public Access, Application Search Details BLSTA-20110118ABD.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴ 47 C.F.R. § 1.1166.

¹⁵ 10 FCC Rcd at 12761-62 ¶ 13.

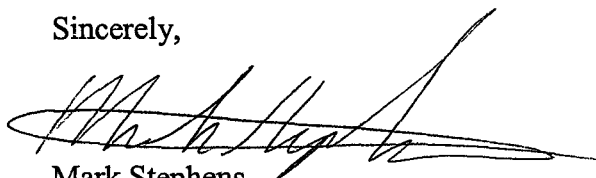
¹⁶ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

financial hardship (emphasis added),”¹⁷ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁸

In asserting only that the “station currently is dark,”¹⁹ licensee failed to clarify its position before the Commission.²⁰ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was “fully document[ed]”²¹ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²² In this case, licensee’s justification for its request to go dark was for “other” reasons, *i.e.*, to change the transmitter site.²³ That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²⁴ we deny licensee’s *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 10 FCC Rcd at 12762 ¶ 15.

¹⁸ 9 FCC Rcd at 5344 ¶ 29.

¹⁹ *Request* at 1.

²⁰ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²¹ 10 FCC Rcd at 12762 ¶ 13 (“It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.”).

²² 47 C.F.R. § 1.1166 (“The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest.”). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²³ Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-2110118ABD, Exhibit 1, Description (*i.e.*, “W300AY [co-channel to W299AT] HAS DISCONTINUED OPERATIONS PENDING APPROVAL . . . TO CHANGE TRANSMITTER SITE. THE FM TRANSLATOR WILL RESUME OPERATIONS WHEN A PERMIT . . . IS APPROVED.”).

²⁴ *Id.*

Adama

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 16 2012

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Tugart Properties, LLC
Station: W228CA (formerly W225BH)
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013830
Regulatory Fee Amount: \$395.00

Dear Mr. Alpert:

This letter responds to Tugart Properties, LLC (Tugart's or licensee's) *Request*,¹ for waiver and refund of \$395.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011)(*Request*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship.”⁷ And “[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. ... Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁹ Licensee attached a copy of the Commission’s Internet web page showing the search details of the application for silent status for “other” reasons.¹⁰ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹³ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁴ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁵ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁶ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ Request at 1.

¹⁰ See FCC CDBS Public Access, Application Search Details BLSTA-20110118ABE.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹³ 47 C.F.R. § 1.1166.

¹⁴ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

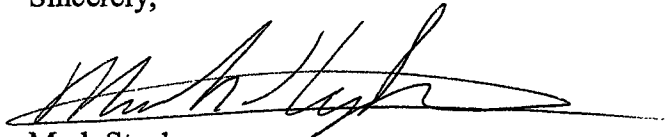
¹⁶ 10 FCC Rcd at 12762 ¶ 15.

unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁷

In asserting only that the "station currently is dark,"¹⁸ licensee failed to clarify its position before the Commission.¹⁹ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²⁰ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²¹ In this case, licensee's justification for its request to go dark was for "other" reasons, *i.e.*, to remain silent under a construction permit.²² That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 9 FCC Rcd at 5344 ¶ 29.

¹⁸ *Request* at 1.

¹⁹ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁰ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²¹ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²² Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-2110118ABE, Exhibit 1, Description (*i.e.*, "W225BH HAS FILED APPLICATION TO CHANGE TRANSMITTER SITE, OPERATING FREQUENCY AND TRANSMITTING POWER. . . LICENSEE HAS DISCONTINUED OPERATIONS AND REQUESTS SPECIAL TEMPORARY AUTHORITY TO REMAIN SILENT UNDER A CONSTRUCTION PERMIT").

²³ *Id.*

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAR 16 2012

Adams
✓

OFFICE OF
MANAGING DIRECTOR

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Re: Tugart Properties, LLC
Station: W249CC
FY 2011 Regulatory Fee Waiver Request
Filed: 9-13-11
Fee Control No.: RROG-11-00013858
Regulatory Fee Amount: \$ 395.00

Dear Mr. Alpert:

This letter responds to Tugart Properties, LLC (Tugart's or licensee's) *Request*,¹ for waiver and refund of \$395.00 previously paid for the required fiscal year (FY) 2011 regulatory fee. For the reasons stated herein, we deny licensee's *Request*.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a case-by-case showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their

¹ Letter from Dan J. Alpert, Esq., 2120 N. 21st Road, Arlington, VA 22201, to FCC, Managing Director, 445 12th Street, SW, Washington, DC 20554 (received Sep. 13, 2011)(*Request*).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344 ¶ 29.

⁴ 10 FCC Rcd at 12761-62 ¶ 13.

⁵ *Id.*

officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees. And pertinent to stations that file “[p]etitions to go dark,” as is set forth at 47 C.F.R. § 73.1740(a)(4), the Commission opined that such petitions “are generally based on financial hardship.”⁷ And “[u]nder th[ose] circumstances, imposition of the regulatory fees could be an impediment to the restoration of broadcast service, and it is unnecessary to require a licensee to make a further showing of financial hardship.”⁸ Licensee did not establish that those circumstances are present and applicable.

Licensee refers to the Commission’s above-referenced discussion concerning a dark station, and it asserts only that “[t]he station currently is dark. . . . Accordingly, a waiver and refund of [the fee] that has been paid is appropriate.”⁹ Licensee attached a copy of the Commission’s Internet web page showing the search details of the application for silent status for “other” reasons.¹⁰ However, licensee did not include verified records of the application materials or provide any verified financial documentation. Moreover, licensee did not explain how it met the Commission’s standard at 47 C.F.R. § 1.1166 at the time it paid the regulatory fee.

A waiver of the Commission’s rules is appropriate only if special circumstances warrant deviation from the general rule, and such deviation will serve the public interest.¹¹ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.¹² In this case, however, licensee did not carry its burden as set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”¹³ Instead, licensee asserts only that its station was silent, but it did not present any evidence to establish whether or not its application to go silent was supported by a fully documented financial position that shows at the time the FY 2011 regulatory fee was paid, it lacked funds sufficient to pay the regulatory fee and to maintain its service to the public.¹⁴ It is not enough merely to assert dark status, especially because a licensee may request to go dark for reasons unrelated to financial hardship.¹⁵ Inherent in the Commission’s statement that “it is unnecessary to require a licensee to make a *further showing of financial hardship* (emphasis added),”¹⁶ is the understanding that the applicant’s petition to go dark was (a) filed because of financial hardship and (b) supported by full documentation of its financial position that met the Commission’s relevant standards. Plainly, in order for it to be

⁶ *Id.*

⁷ 10 FCC Rcd at 12762 ¶ 15.

⁸ *Id.*

⁹ *Request* at 1.

¹⁰ See FCC CDBS Public Access, Application Search Details BLSTA-20110124AAG.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹³ 47 C.F.R. § 1.1166.

¹⁴ 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ The FCC Form to request silent status includes in the section, “Reason for going silent” five categories, *i.e.*, Technical, Financing, Staffing, Program Source, and Other. The applicant also may provide the reason for the request.

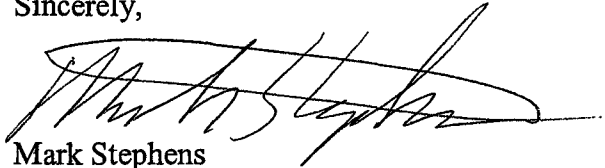
¹⁶ 10 FCC Rcd at 12762 ¶ 15.

unnecessary to require a *further* showing, the applicant must have made a valid *prior* showing of the requisite financial information. Moreover, because each waiver is considered on a case-by-case basis, the financial information must be relevant to the current request for a waiver of the fee and it must be sufficient to demonstrate compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁷

In asserting only that the "station currently is dark,"¹⁸ licensee failed to clarify its position before the Commission.¹⁹ Rather than the unsupported conclusion offered, licensee should have provided evidence whether its application to go dark was based on financial hardship that was "fully document[ed]"²⁰ and accepted by the Commission as such evidence, and if not (apparently as is the case here), licensee should have provided sufficient documentation to meet the standard set forth at 47 C.F.R. § 1.1166.²¹ In this case, licensee's justification for its request to go dark was not for financial reasons, rather because it intended to construct a new facility.²² That is not evidence of financial hardship. We will not assume the existence or sufficiency of information not part of the request. Accordingly, without sufficient evidence of financial hardship,²³ we deny licensee's *Request* for a waiver of the required regulatory fee and a refund of the amount paid.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

¹⁷ 9 FCC Rcd at 5344 ¶ 29.

¹⁸ *Request* at 1.

¹⁹ *Bartholdi Cable Co. Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997).

²⁰ 10 FCC Rcd at 12762 ¶ 13 ("It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.").

²¹ 47 C.F.R. § 1.1166 ("The fee . . . may be waived . . . in specific instances, on a case-by-case basis, where good cause is shown and where waiver . . . of the fee would promote the public interest."). *See also* 10 FCC Rcd at 12761-62 ¶ 13.

²² Notification of Suspension of Operations/Request for Silent STA, FCC File No. BLSTA-2110124AAG, Exhibit 1, Description (*i.e.*, "W249CC REQUESTS PERMISSION TO REMAIN SILENT PENDING THE APPROVAL AND CONSTRUCTION OF A NEW FACILITY NEAR HELEN, GA.").

²³ *Id.*